



Michelle Lujan Grisham
Governor

Howie C. Morales
Lt. Governor

**NEW MEXICO
ENVIRONMENT DEPARTMENT**

Harold Runnels Building
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Santa Fe, NM 87502-5469
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James C. Kenney
Cabinet Secretary Designate

Jennifer J. Pruett
Deputy Secretary

Certified Mail - Return Receipt Requested

January 14, 2021

Mr. Bob Prewitt
Double M. Properties
440 Alameda Blvd, NE Suite E
Albuquerque, New Mexico 87113

Re: **Mr. Bob Prewitt Double M. Properties; Construction Stormwater; SIC 1522; NPDES Desk Audit; NPDES #NMR1002AG; December 12, 2021**

Dear Mr. Prewitt:

Enclosed please find a copy of the report for the referenced inspection that the New Mexico Environment Department (NMED) conducted at your facility on behalf of the U.S. Environmental Protection Agency (USEPA). This inspection report will be sent to the USEPA in Dallas for their review. These inspections are used by USEPA to determine compliance with the National Pollutant Discharge Elimination System (NPDES) permitting program in accordance with requirements of the federal Clean Water Act.

Introduction, detailed site observations, and findings noted during this inspection are discussed in the Further Explanations section of the inspection report.

You are encouraged to review the inspection report, required to correct any problems noted during the inspection, and advised to modify your operational and/or administrative procedures, as appropriate. If you have comments on or concerns with the basis for the findings in the NMED inspection report, please contact us (see the address below) in writing within 30 days from the date of this letter. Further, you are encouraged to notify in writing both the USEPA and NMED regarding modifications and compliance schedules at the addresses below:

Curry Jones
US Environmental Protection Agency, Suite 1200
Enforcement Branch (6EN-WS)
1445 Ross Avenue
Dallas, Texas 75202-2733

Sarah Holcomb, Program Manager
New Mexico Environment Department
Surface Water Quality Bureau
Point Source Regulation Section
P.O. Box 5469
Santa Fe, New Mexico 87502

Mr. Bob Prewitt
January 15, 2021
NMR1002AG

If you have any questions about this inspection report, please contact Daniel Valenta at 505-819-8112 or at daniel.valenta@state.nm.us.

Sincerely,

Sarah Holcomb
Surface Water Quality Bureau

Cc:

Amy Andrews, USEPA (6EN-WM) by e-mail
David Esparza, USEPA (6EN-WM) by e-mail
Curry Jones, USEPA (6EN-WS) by e-mail
Darlene Whitten-Hill, USEPA (6EN-WC) by e-mail
Nancy Williams, USEPA (6EN-WC) by e-mail
John Rhoderick, NMED Region I
Kelley Fetter, E2RC at kfetter@e2rc.com



Form Approved
OMB No. 2040-0003
Approval Expires 7-31-85

NPDES Compliance Inspection Report

Section A: National Data System Coding

Transaction Code	NPDES	yr/mo/day	Inspec. Type	Inspector	Fac Type
1 N 2 5 3 N M R 1 0 0 2 A G 11 12 2 0 1 2 1 6 17 18 }				19 S 20 2	
Remarks					
C O N S T R U C T I O N > 5 A C R E					
Inspection Work Days	Facility Evaluation Rating	BI	QA	Reserved	
67 69	70 1	71 N	72 N	73 74 75	80

Section B: Facility Data

Name and Location of Facility Inspected (For industrial users discharging to POTW, also include POTW name and NPDES permit number)	Entry Time /Date 12-16-2020	Permit Effective Date 2-16-2017
Legacy at Sierra Vista, 0.43 Miles West of Jubilee Blvd. on NM-6 Los Lunas New Mexico	Exit Time/Date 1-12-2021	Permit Expiration Date 2-16-2022
Valencia County		
Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Number(s)	Other Facility Data	
Mr. Bob Prewitt/ President Double M. Properties /505-345-2694	LAT 34.8202 N	
Name, Address of Responsible Official/Title/Phone and Fax Number	LONG -106.8003 W	
Mr. Bob Prewitt/4400 Alameda Blvd. NE Suite E, Albuquerque, New Mexico 87113/President Double M. Properties/505-345-2694	SIC 1522	
	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Section C: Areas Evaluated During Inspection

(S = Satisfactory, M = Marginal, U = Unsatisfactory, N = Not Evaluated)

U Permit	N Flow Measurement	U Operations & Maintenance	N CSO/SSO
U Records/Reports	N Self-Monitoring Program	N Sludge Handling/Disposal	N Pollution Prevention
U Facility Site Review	N Compliance Schedules	N Pretreatment	N Multimedia
N Effluent/Receiving Waters	N Laboratory	N Storm Water	N Other:

Section D: Summary of Findings/Comments (Attach additional sheets if necessary)

- The disturbance covers 180 acres. Estimated 123 acres of construction site did not have permit coverage. Area covered by permit may have not met permit requirements.
- Please see further explanations for details.

Name(s) and Signature(s) of Inspector(s)	Agency/Office/Telephone/Fax	Date
Daniel Valenta /S/Daniel Valenta	NMED/SWQB 505-819-8112	1/14/2021
Signature of Management QA Reviewer	Agency/Office/Phone and Fax Numbers	Date
Sarah Holcomb	NMED/SWQB 505-819-9734	

**Legacy at Sierra Vista
Double M. Properties
NMR1002AG**

Further Explanations

Introduction

Beginning on December 9, 2020 a Remote Desk Audit (RDA) was conducted by Daniel Valenta of the NMED SWQB and Mr. David Esparza (USEPA). Mr. Bob Prewitt, President of Double M Properties, was contacted at 9:48am by phone and e-mail to request documents concerning the Legacy at Sierra Vista construction site. A brief exit interview to discuss the preliminary findings of the RDA was conducted by phone with Mr. Prewitt at approximately 10:30am on January 12, 2021.

This report is based on a review of the EPA online notice of intent (eNOI) database, review of files maintained by NMED, readily available on-line aerial photographs, and off-site observation by Mr. Jeremy Cahn of the NMED Air Quality Bureau.

NMED SWQB has received 29 complaints from the public concerning dust issues from this site. Complaint received on November 23, 2020, "there is an extreme issue with blowing sand from land development currently underway. This is a senior community and I am very concerned regarding the environmental safety of the almost 200 residents living at Jubilee. I am a health care professional and very concerned regarding the health of the residents due to blowing sand which is obviously blowing in through the vents in our homes."

Legacy at Sierra Vista will consist of the development of 180 acres. Infrastructure, utilities, permanent drainage, and permanent stabilization for the construction of the infrastructure and utility development for a new subdivision is planned.

Clean Water Act and Permit Requirements

Section 301 (a) of the Federal Water Pollution Control Act states that *"Except as in compliance with this section and sections 302, 306, 307, 318, 402 and 404 of this Act, the discharge of any pollutant by any person shall be unlawful."*

Per 40 CFR Part 122.26, storm water discharges associated with construction activity are required to obtain coverage under an NPDES permit. Large construction activity is defined in 40 CFR Part 122.26(b) (14) (x), as follows: *"Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more."*

Beginning on February 16, 2017 storm water discharges associated with construction activities that will disturb one or more acres of land, or will disturb less than one acre of land but are part of a common plan of development or sale that will ultimately disturb one or more acres of land; or have been designated by EPA as needing permit coverage under 40 CFR 122.26(a)(1)(v) or 40 CFR 122.26(b) (15) (ii) are required to obtain coverage under EPA's 2017 Construction General Permit.

**Legacy at Sierra Vista
Double M. Properties
NMR1002AG**

Permit coverage is required from the “commencement of construction activities” until “final stabilization” as defined in Appendix A of the USEPA’s 2017 Construction General Permit (CGP). The 2017 CGP, Definitions, Appendix A, states, “Operator” – for the purposes of this permit and in the context of stormwater discharges associated with construction activity, any party associated with construction project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or.
2. The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions.

This definition is provided to inform permittees of EPA’s interpretation of how the regulatory definitions of “owner or operator” and “facility or activity” are applied to discharges of stormwater associated with construction activity. Subcontractors generally are not considered operators for the purposes of this permit.

Requirements under the 2017 Construction General Permit (CGP)

1.4 Submitting your Notice of Intent (NOI)

All “operators” (as defined in Appendix A) associated with your construction site, who meet the Part 1.1 eligibility requirements, and who seek coverage under this permit, must submit to EPA a complete and accurate NOI in accordance with the deadlines in Table 1 prior to commencing construction activities.

2.1.1 Account for the following factors in designing your stormwater controls:

The expected amount, frequency, intensity, and duration of precipitation. The nature of stormwater runoff and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features. You must design stormwater controls to control stormwater volume, velocity, and peak flow rates to minimize discharges of pollutants in stormwater and to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points; and The soil type and range of soil particle sizes expected to be present on the site.

2.2.6 Minimize dust.

On areas of exposed soil, minimize dust through the appropriate application of water or other dust suppression techniques to control the generation of pollutants that could be discharged in stormwater from the site.

2.2.8 Preserve native topsoil, unless infeasible.

**Legacy at Sierra Vista
Double M. Properties
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2.2.14 Stabilize exposed portions of the site.

Implement and maintain stabilization measures (e.g., seeding protected by erosion controls until vegetation is established, sodding, mulching, erosion control blankets, hydromulch, gravel) that minimize erosion from exposed portions of the site in accordance with Parts 2.2.14a and 2.2.14b.

ii. More than five acres (>5.0) •

Initiate the installation of stabilization measures immediately in any areas of exposed soil where construction activities have permanently ceased or will be temporarily inactive for 14 or more calendar days; and

- **Complete the installation of stabilization measures as soon as practicable, but no later than seven (7) calendar days after stabilization has been initiated.**

(b) Operators that are affected by unforeseen circumstances that delay the initiation and/or completion of vegetative stabilization: (i) Immediately initiate and, within 14 calendar days, complete the installation of temporary non-vegetative stabilization measures to prevent erosion; (ii) Complete all soil conditioning, seeding, watering or irrigation installation, mulching, and other required activities related to the planting and initial establishment of vegetation as soon as conditions or circumstances allow it on your site; and (iii) Document in the SWPPP the circumstances that prevent you from meeting the deadlines in Part 2.2.14a and the schedule you will follow for initiating and completing stabilization.

Findings:

- Page 8 of the submitted SWPPP details when different areas of the site were stabilized, see attachment 3. Temporary soil stabilizers were proposed. The soil type and range of soil particle sizes expected to be present on the site was discussed in the SWPPP however when the proposed stabilization appeared to fail no other solution was discussed in the SWPPP.
- See attachment 1 and 2. The Notice of Intent (Tracking number: NMR100AG) was submitted to EPA on July 18, 2019. In the NOI the estimated area to be disturbed was 57 acres. Mr. Prewitt was contacted on December 9, 2020 to request copies of the SWPPP. On December 10, 2020 a change request was submitted to the EPA to increase the estimated disturbed area to 180 acres. In the closing interview Mr. Prewitt stated the site grading and excavation was completed in March or June.
- Silt fence BMP, see photo 3, does not appear to be maintained. Blowing sand has nearly covered the BMP.
- From the photos submitted by the NMED Air Quality Bureau and from many residents near the construction site, it appears no native topsoil was preserved.

**Legacy at Sierra Vista
Double M. Properties
NMR1002AG**

- Site Inspection reports for the year 2020 were reviewed. The inspections were completed at the required intervals. Of the 24 reports all answered yes to question 16, "Are dust control measures being properly implemented." The average time spent at the site in the 24 inspections was 26 minutes. One Corrective Action Report was completed on March 2, 2020. A silt fence was installed, and the construction entrance completed.

Site Photos Taken by Air Quality Bureau NMED
From Public Road

**NMED/SWQB
Official Photograph Log**

Photo # 1

Photographer: Jeremy Cahn	Date: December 6, 2021	Time: 1117
City/County: 0.43 Miles West of Jubilee Blvd. on NM-6 Los Lunas New Mexico/ Valencia County		
Location: Legacy at Sierra Vista,		
Subject: Part of the Sierra Vista construction site. Photo taken from public road.		



**NMED/SWQB
Official Photograph Log**

Photo # 2

Photographer: Jeremy Cahn	Date: December 6, 2021	Time: 1119
City/County: 0.43 Miles West of Jubilee Blvd. on NM-6 Los Lunas New Mexico/ Valencia County		
Location: Legacy at Sierra Vista,		
Subject: West side of Sierra Vista construction site. Photo taken from public road.		



**NMED/SWQB
Official Photograph Log**

Photo # 3

Photographer: Jeremy Cahn	Date: December 6, 2021	Time: 1119
City/County: 0.43 Miles West of Jubilee Blvd. on NM-6 Los Lunas New Mexico/ Valencia County		
Location: Legacy at Sierra Vista,		
Subject: Silt fence running across site nearly covered by blowing sand. Photo taken from public road.		



**NMED/SWQB
Official Photograph Log**

Photo # 4

Photographer: Jeremy Cahn	Date: December 6, 2021	Time: 1124
City/County: 0.43 Miles West of Jubilee Blvd. on NM-6 Los Lunas New Mexico/ Valencia County		
Location: Legacy at Sierra Vista,		
Subject: East side of Sierra Vista site looking West. Photo taken from public road.		



**NMED/SWQB
Official Photograph Log**

Photo # 5

Photographer: Jeremy Cahn	Date: December 6, 2021	Time: 1124
City/County: 0.43 Miles West of Jubilee Blvd. on NM-6 Los Lunas New Mexico/ Valencia County		
Location: Legacy at Sierra Vista,		
Subject: Looking East, note community next to construction site that is being impacted by blowing sand.		



Attachment 1

NOI on June 18, 2019



Submission of this Notice of Intent (NOI) constitutes notice that the operator identified in Section III of this form requests authorization to discharge pursuant to the NPDES Construction General Permit (CGP) permit number identified in Section II of this form. Submission of this NOI also constitutes notice that the operator identified in Section III of this form meets the eligibility requirements of Part 1.1 CGP for the project identified in Section IV of this form. Permit coverage is required prior to commencement of construction activity until you are eligible to terminate coverage as detailed in Part 8 of the CGP. To obtain authorization, you must submit a complete and accurate NOI form. Discharges are not authorized if your NOI is incomplete or inaccurate or if you were never eligible for permit coverage. Refer to the instructions at the end of this form.

Permit Information

NPDES ID: NMR1002AGState where your construction site is located: NMIs your construction site located on Indian Country Lands? ☐ YES ☒ NOAre you requesting coverage under this NOI as a "Federal Operator" as defined in Appendix A (https://www.epa.gov/sites/production/files/2019-05/documents/final_2017_cgp_appendix_a_-_definitions.pdf)?☐ YES ☒ NOHave stormwater discharges from your current construction site been covered previously under an NPDES permit? ☐ YES ☒ NOWill you use polymers, flocculants, or other treatment chemicals at your construction site? ☐ YES ☒ NOHas a Stormwater Pollution Prevention Plan (SWPPP) been prepared in advance of filling this NOI, as required? ☒ YES ☐ NOAre you able to demonstrate that you meet one of the criteria listed in Appendix D (https://www.epa.gov/sites/production/files/2017-02/documents/2017_cgp_final_appendix_d_-_endangered_species_reqs_508.pdf) with respect to protection of threatened or endangered species listed under the Endangered Species Act (ESA) and federally designated critical habitat?☒ YES ☐ NOHave you completed the screening process in Appendix E (https://www.epa.gov/sites/production/files/2017-02/documents/2017_cgp_final_appendix_e_-_historic_properties_reqs_508.pdf) relating to the protection of historic properties?☒ YES ☐ NO

Indicating "Yes" below, I confirm that I understand that CGP only authorized the allowable stormwater discharges in Part 1.2.1 and the allowable non-stormwater discharges listed in Part 1.2.2. Any discharges not expressly authorized in this permit cannot become authorized or shielded from liability under CWA section 402(k) by disclosure to EPA, state or local authorities after issuance of this permit via any means, including the Notice of Intent (NOI) to be covered by the permit, the Stormwater Pollution Prevention Plan (SWPPP), during an inspection, etc. If any discharges requiring NPDES permit coverage other than the allowable stormwater and non-stormwater discharges listed in Parts 1.2.1 and 1.2.2 will be discharged, they must be covered under another NPDES permit.

☒ YES ☐ NO

Operator Information

Operator Information

Operator Name: Double M Properties

Operator Mailing Address:

Address Line 1: 4400 Alameda Blvd. NE Suite E

Address Line 2:

City: AlbuquerqueZIP/Postal Code: 87113State: NMCounty or Similar Division: BERNALILLO

Operator Point of Contact Information

First Name, Middle Initial, LastName: Bob PrewittTitle: Vice PresidentPhone: 505-345-2694 Ext.Email: prewitt@swcp.com

Project/Site Information

Project/Site Name: Legacy at Sierra Vista

Project/Site Address

Address Line 1: 0.43 miles West of Jubilee Blvd. on NM-6

Address Line 2:

City: Los Lunas

ZIP/Postal Code: 87031

State: NM

County or Similar Division: VALENCIA

Latitude/Longitude: 34.8202°N, 106.8003°W

Latitude/Longitude Data Source: Google Earth

Horizontal Reference Datum: NAD 83

Project Start Date: 2019-08-19

Project End Date: 2020-07-03

Estimated Area to be Disturbed: 57

Types of Construction Sites:

- Highway or Road
- Utility

Will there be demolition of any structure built or renovated before January 1, 1980? ☐ YES ☒ NO

Was the pre-development land use used for agriculture? ☐ YES ☒ NO

Have earth-disturbing activities commenced on your project/site? ☐ YES ☒ NO

Is your project located on a property of religious or cultural significance to an Indian tribe? ☐ YES ☒ NO

Discharge Information

Does your project/site discharge stormwater into a Municipal Separate Storm Sewer System (MS4)? ☒ YES ☐ NO

Are there any waters of the U.S. within 50 feet of your project's earth disturbances? ☒ YES ☐ NO

Are any of the waters of the U.S. to which you discharge designated by the state or tribal authority under its antidegradation policy as a Tier 2 (or Tier 2.5) water (water quality exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water) or as a Tier 3 water (Outstanding National Resource Water)? See Appendix F (https://www.epa.gov/sites/production/files/2017-02/documents/2017_cgp_final_appendix_f_-_tier_3_tier_2_and_tier_2.5_waters_508.pdf)

☐ YES ☒ NO

001: Dry Ephemeral Stream

Latitude/Longitude: 34.8185°N, 106.8043°W

Tier Designation: N/A

Is this receiving water impaired (on the CWA 303(d) list)? ☐ YES ☒ NO

Has a TMDL been completed for this receiving waterbody? ☐ YES ☒ NO

002: Unnamed Streamriver

Latitude/Longitude: 34.8258°N, 106.7956°W

Tier Designation: N/A

Is this receiving water impaired (on the CWA 303(d) list)? ☐ YES ☒ NO

Has a TMDL been completed for this receiving waterbody? ☐ YES ☒ NO

Stormwater Pollution Prevention Plan (SWPPP)

First Name, Middle Initial, LastName: Kelley V Fetter, P.E., CPSWQ, CPMSM

Title: President

Phone: 505-867-4040

Ext.

Email: info@e2rc.com

Endangered Species Protection

Using the Instructions in Appendix D of the CGP, under which criterion listed in Appendix D are you eligible for coverage under this permit? Criterion C

Provide a brief summary of the basis for criterion selection listed above (the necessary content for a supportive basis statement is provided under the criterion you selected.):

The U.S. FWS Species Report and IPaC Critical Habitat Mapping portal indicate there are no critical habitats or endangered, threatened or candidate species in the action area. The nearest critical habitat is 4.43 miles east of the project. The Yellow - Billed Cuckoo and Southwestern Willow Flycatcher habitats consists of densely wooded riparian areas near a water source. As aviary species, the bird's movements is not limited by borders or other impediments. However, the action area in question does not provide the preferred habitat or food requirements to support the species the habitat is near the action area.

What federally-listed species or federally-designated critical habitat are located in your "action area"?

Rio Grande Silvery Minnow, Yellow-Billed Cuckoo and Southwestern Willow Flycatcher.

What is the distance between your site and the listed species or critical habitat (miles)?

4.43

Copy of your Site Map:

Name	Created Date	Size
Critical Habitat for Threatened & Endangered Species [USFWS].pdf	06/17/2019 3:42 PM	689.77 KB

Historic Preservation

Are you installing any stormwater controls as described in Appendix E (https://www.epa.gov/sites/production/files/2017-02/documents/2017_cgp_final_appendix_e_-_historic_properties_reqs_508.pdf) that require subsurface earth disturbances? (Appendix E (https://www.epa.gov/sites/production/files/2017-02/documents/2017_cgp_final_appendix_e_-_historic_properties_reqs_508.pdf), Step 1)

☒ YES ☐ NO

Have prior surveys or evaluations conducted on the site already determined historic properties do not exist, or that prior disturbances have precluded the existence of historic properties? (Appendix E (https://www.epa.gov/sites/production/files/2017-02/documents/2017_cgp_final_appendix_e_-_historic_properties_reqs_508.pdf), Step 2):

☒ YES ☐ NO

Certification Information

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. Signing an electronic document on behalf of another person is subject to criminal, civil, administrative, or other lawful action.

Certified By: Robert Prewitt

Certifier Title: President

Certifier Email: prewitt@swcp.com

Certified On: 07/18/2019 5:31 PM

Attachment 2

NOI on December 10, 2020



Submission of this Notice of Intent (NOI) constitutes notice that the operator identified in Section III of this form requests authorization to discharge pursuant to the NPDES Construction General Permit (CGP) permit number identified in Section II of this form. Submission of this NOI also constitutes notice that the operator identified in Section III of this form meets the eligibility requirements of Part 1.1 CGP for the project identified in Section IV of this form. Permit coverage is required prior to commencement of construction activity until you are eligible to terminate coverage as detailed in Part 8 of the CGP. To obtain authorization, you must submit a complete and accurate NOI form. Discharges are not authorized if your NOI is incomplete or inaccurate or if you were never eligible for permit coverage. Refer to the instructions at the end of this form.

Permit Information

NPDES ID: NMR1002AGState/Territory to which your project/site is discharging: NM

Is your project/site located on federally recognized Indian Country lands? No

Are you requesting coverage under this NOI as a "Federal Operator" as defined in Appendix A
(https://www.epa.gov/sites/production/files/2019-05/documents/final_2017_cgp_appendix_a_-_definitions.pdf)?

No

Have stormwater discharges from your current construction site been covered previously under an NPDES permit? No

Will you use polymers, flocculants, or other treatment chemicals at your construction site? No

Has a Stormwater Pollution Prevention Plan (SWPPP) been prepared in advance of filling this NOI, as required? Yes

Are you able to demonstrate that you meet one of the criteria listed in Appendix D (https://www.epa.gov/sites/production/files/2017-02/documents/2017_cgp_final_appendix_d_-_endangered_species_reqs_508.pdf) with respect to protection of threatened or endangered species listed under the Endangered Species Act (ESA) and federally designated critical habitat?

Yes

Have you completed the screening process in Appendix E (https://www.epa.gov/sites/production/files/2017-02/documents/2017_cgp_final_appendix_e_-_historic_properties_reqs_508.pdf) relating to the protection of historic properties?

Yes

Indicating "Yes" below, I confirm that I understand that CGP only authorized the allowable stormwater discharges in Part 1.2.1 and the allowable non-stormwater discharges listed in Part 1.2.2. Any discharges not expressly authorized in this permit cannot become authorized or shielded from liability under CWA section 402(k) by disclosure to EPA, state or local authorities after issuance of this permit via any means, including the Notice of Intent (NOI) to be covered by the permit, the Stormwater Pollution Prevention Plan (SWPPP), during an inspection, etc. If any discharges requiring NPDES permit coverage other than the allowable stormwater and non-stormwater discharges listed in Parts 1.2.1 and 1.2.2 will be discharged, they must be covered under another NPDES permit.

Yes

Operator Information

Operator Information

Operator Name: Double M. Properties

Operator Mailing Address:

Address Line 1: 4400 Alameda Blvd. NE Suite E

Address Line 2:

City: AlbuquerqueZIP/Postal Code: 87113State: NMCounty or Similar Division: Bernalillo

Operator Point of Contact Information

First Name **Middle Initial** **Last Name:** Bob Prewitt

Title: Vice President

Phone: 505-345-2694 **Ext.:**

Email: prewitt@swcp.com

NOI Preparer Information

☒ This NOI is being prepared by someone other than the certifier.

First Name **Middle Initial** **Last Name:** Sydney Fetter

Organization: E2RC, LLC.

Phone: (505) 867-4040 **Ext.:**

Email: enoi_certify@e2rc.com

Project/Site Information

Project/Site Name: Legacy at Sierra Vista

Project/Site Address

Address Line 1: 0.43 miles West of Jubilee Blvd. on NM-6

Address Line 2: **City:** Los Lunas

ZIP/Postal Code: 87031 **State:** NM

County or Similar Division: Valencia

Latitude/Longitude: 34.820242°N, 106.800303°W

Latitude/Longitude Data Source: Google Earth **Horizontal Reference Datum:** NAD 83

Project Start Date: 08/19/2019 **Project End Date:** 12/31/2021 **Estimated Area to be Disturbed:** 180

Types of Construction Sites:

- Highway or Road
- Utility

Will there be demolition of any structure built or renovated before January 1, 1980? No

Was the pre-development land use used for agriculture? No

Have earth-disturbing activities commenced on your project/site? No

Is your project/site located on federally recognized Indian Country lands? No

Is your project/site located on a property of religious or cultural significance to an Indian tribe? No

Discharge Information

Does your project/site discharge stormwater into a Municipal Separate Storm Sewer System (MS4)? Yes

Are there any waters of the U.S. within 50 feet of your project's earth disturbances? Yes

Are any of the waters of the U.S. to which you discharge designated by the state or tribal authority under its antidegradation policy as a Tier 2 (or Tier 2.5) water (water quality exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water) or as a Tier 3 water (Outstanding National Resource Water)? See Appendix F (https://www.epa.gov/sites/production/files/2017-02/documents/2017_cgp_final_appendix_f_-_tier_3_tier_2_and_tier_2.5_waters_508.pdf)

No

001: Dry Ephemeral Stream

Latitude/Longitude: 34.818538°N, 106.804302°W

Tier Designation: N/A

Is this receiving water impaired (on the CWA 303(d) list)? No

Has a TMDL been completed for this receiving waterbody? No

002: Unnamed Streamriver

Latitude/Longitude: 34.825786°N, 106.795594°W

Tier Designation: N/A

Is this receiving water impaired (on the CWA 303(d) list)? No

Has a TMDL been completed for this receiving waterbody? No

Stormwater Pollution Prevention Plan (SWPPP)

First Name Middle Initial Last Name: Kelley V Fetter, P.E., CPSWQ, CPMSM

Organization:

Title: President

Phone: 505-867-4040

Ext.:

Email: info@e2rc.com

Endangered Species Protection

Using the Instructions in Appendix D of the CGP, under which criterion listed in Appendix D are you eligible for coverage under this permit?

Criterion C

Provide a brief summary of the basis for criterion selection listed above (the necessary content for a supportive basis statement is provided under the criterion you selected.):

The U.S. FWS Species Report and IPaC Critical Habitat Mapping portal indicate there are no critical habitats or endangered, threatened or candidate species in the action area. The nearest critical habitat is 4.43 miles east of the project. The Yellow - Billed Cuckoo and Southwestern Willow Flycatcher habitats consists of densely wooded riparian areas near a water source. As aviary species, the bird's movements is not limited by borders or other impediments. However, the action area in question does not provide the preferred habitat or food requirements to support the species the habitat is near the action area.


What federally-listed species or federally-designated critical habitat are located in your "action area"?

Rio Grande Silvery Minnow, Yellow-Billed Cuckoo and Southwestern Willow Flycatcher.

What is the distance between your site and the listed species or critical habitat (miles)?

4.43

Copy of your Site Map:

Name	Uploaded Date	Size
 Critical Habitat for Threatened & Endangered Species [USFWS].pdf (attachment/1298537)	12/10/2020	689.77 KB

Historic Preservation

Are you installing any stormwater controls as described in Appendix E (https://www.epa.gov/sites/production/files/2017-02/documents/2017_cgp_final_appendix_e_-_historic_properties_reqs_508.pdf) that require subsurface earth disturbances? (Appendix E (https://www.epa.gov/sites/production/files/2017-02/documents/2017_cgp_final_appendix_e_-_historic_properties_reqs_508.pdf), Step 1)

Yes

- ➔ Have prior surveys or evaluations conducted on the site already determined historic properties do not exist, or that prior disturbances have precluded the existence of historic properties? (Appendix E (https://www.epa.gov/sites/production/files/2017-02/documents/2017_cgp_final_appendix_e_-_historic_properties_reqs_508.pdf), Step 2):

Yes

Certification Information

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. Signing an electronic document on behalf of another person is subject to criminal, civil, administrative, or other lawful action.

Certified By: Robert Prewitt

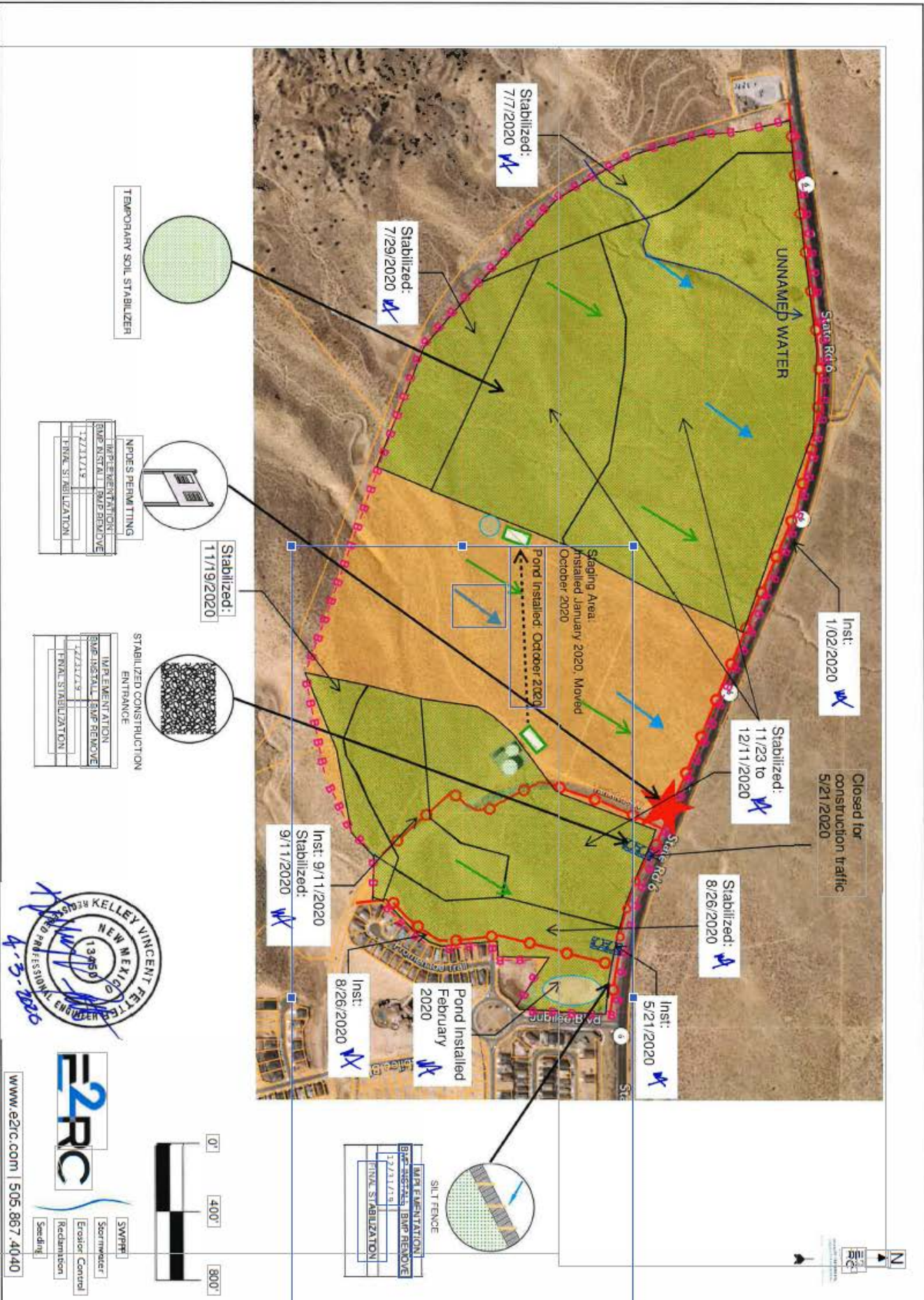
Certifier Title: President

Certifier Email: prewitt@swcp.com

Certified On: 12/10/2020 12:39 PM ET

Attachment 3

Areas Noted as Stabilized



KELLEY VINCENT
NEW MEXICO
13950
PROFESSIONAL ENGINEER
4-3-2020

E2RC
www.e2rc.com | 505.867.4040

Photos Taken by Resident of Sierra Vista

Sierra Vista 11-09-2020 Sand Storm Impact to Jubilee at Los Lunas Photographs

This picture is looking west on Zuni River Circle SW. The Sierra Vista Development is approximately 3 blocks to the west.



The following four pictures were taken on Promenade Trail during the sandstorm. This first picture is looking north to our recycling center.







Showing the entrance gate area to Jubilee looking south toward El Cerro.



The following pictures are looking southeast from the El Cerro Trail Head as we were heading east on NM6. This particular photo shows the dust storm totally enveloping our community of Jubilee. Cypress trees in the left of the photo are part of the Jubilee entrance on Jubilee Boulevard.





This last photo is taken heading west on NM6 looking southwest toward El Cerro showing sand blowing and over Huning Ranch and Jubilee at Los Lunas.



End

Submitted Reply

(Other Submitted Material Available if Requested)



SWPPP
Stormwater
Erosion Control
Reclamation
Seeding

February 8, 2021

Curry Jones
UN Environmental Protection Agency, STE 1200
Enforcement Branch (6EN-WS)
1445 Ross Avenue
Dallas, TX 75202-2733

RE: Mr. Bob Prewitt Double M Properties; Construction Stormwater SIC 1522; NPDES Desk Audit; NPDES #NMR1002AG; December 12, 2021; USEPA Notice Date January 14, 2021.

Dear Mr. Jones:

E2RC, LLC ("E2RC") has been contracted by Mr. Bob Prewitt and Double M Properties ("Double M") to perform compliance services for the project identified in the Reference Line. Mr. Prewitt notified Mr. Daniel Valenta of the New Mexico Environment Department - Surface Water Quality Bureau (NMED-SWQB) that E2RC had been engaged for compliance services inclusive of dialogue with NMED and USEPA on Mr. Prewitt's and Double M Properties' behalf. This letter serves as notification to the USEPA and NMED of Mr. Prewitt's desire to respond to the audit.

The notification letter from NMED advises observations and findings. It advises a requirement to correct items noted and/or modify procedures as appropriate. Written notification to USEPA and NMED is requested if modifications are made.

The response starts with the NPDES Compliance Inspection Report and concludes on page 7.

NPDES Compliance Inspection Report

The NPDES Compliance Inspection Report is written around storm water management requirements as described in the current Construction General Permit ("CGP", "Permit"). A claim of unsatisfactory is made with respect to the Permit, Records/Reports, Facility Site Review, and Operations & Maintenance. However, the findings discussed in the NPDES

Inspection Report and subsequent explanations are inadequate and do not provide why or how these areas are unsatisfactory with regards to compliance with the CGP.

These claims are disputed.

The reviewer claims, in Section C, the permit information is unsatisfactory. The NOI is located in the site compliance document (Storm Water Pollution Prevention Plan or SWPPP) covering both the initial disturbance and the additionally disturbed acreage. Double M Properties, of which Mr. Prewitt is an officer, qualifies as the sole operator based on the definitions in the permit. Mr. Prewitt has control over plans, specifications, and day to day operations. Neither the initial NOI nor the updated NOI were rejected by USEPA.

Regarding Records and Reports, Mr. Valenta advised Mr. Prewitt and me that the inspection records were acceptable with respect to performance during a telephone conversation that began at 10:30 AM on January 12, 2021. This is mentioned in the Findings in the last bullet point. E2RC acknowledges activities related to maintaining dust controls – not just stormwater controls – is important for a reviewer so a complete set of information is available to use in an evaluation. A comprehensive data set (S&EP2 Maintenance Log) detailing when Best Management Practice (BMP) maintenance has been performed is included as an enclosure to this response. It updates the information provided to the reviewer per the direction from the NMED cover letter.

The Facility Site Review claim is conclusive with respect to stormwater controls – there is no mention of an issue with the stormwater controls. The Official Photographic Log shows stormwater controls (Photos #1 and #2). The controls are performing. The Photo Log includes a photo of silt fence used for dust control (Photo #3) that notes an accumulation of sediment. Photo #3 indicates this control is performing and requires maintenance, but also demonstrates the control is operating as designed – it is capturing sediment.

The distinction in CGP Section 2.2.3 is specific to perimeter stormwater controls only. The silt fences shown in Photo #3 of the NMED/SWQB Official Photograph Log (“Photo Log”) is not a perimeter stormwater control. The silt fence is used as part of a dust minimization activity and Section 2.2.6 does not speak to specifics regarding controls for dust minimization or their maintenance. Photos showing silt fence for dust control post - maintenance are included as an enclosure to this response. This work is ongoing as the site construction continues.

E2RC disputes the unsatisfactory notation referencing Operations and Maintenance. The project data provided to the NMED reviewer shows conclusively the operator and subcontractors are fully engaged in compliance. The reviewer acknowledges the site map detailing the implementation dates of controls of all types (Bullet one in Findings). The site map shows active and ongoing compliance. The reviewer acknowledges site inspections were completed – fully – and within the required intervals. The logs provided with this

response demonstrate conclusive and focused compliance effort. The work is comprehensive and there are no references to any stormwater compliance failures. Dust mitigation efforts have taken on enhanced priority since July 2020 as shown on the updated site map. The abundance of information supporting active, steady, regular, enhanced, and comprehensive focus on stormwater compliance and dust mitigation is compelling information. It demonstrates satisfactory Operations and Maintenance work.

Section D of the Compliance Report identifies in item #1 that the disturbance covers 180 acres. It claims 123 acres may not have permit coverage and that the area covered by the permit may not have met the requirements. This claim fails using CGP Section 1 as the basis. We note:

- Part 1.1.1 tells us to file a Notice of Intent (“NOI”) when one acre or more of ground is disturbed, or a smaller disturbance if it is part of a common plan of development. This requirement was met with the original NOI submittal.
- Part 1.4.4 describes how corrections or updating should occur. There is no time requirement noted in the CGP thus none can be applied ‘ex post facto’.
 - The NOI was updated during the life of the project. The project continues to operate under the revised NOI.
 - The living document rule for stormwater management compliance has been followed as updated documentation is included in the site’s SWPPP. The documentation was provided to USEPA and NMED in response to email requests from them in December 2020.
 - The site has additional updates that are included in the compliance documents and listed in the enclosures to this response.

Findings

The reviewer claims in his initial bullet point that the site ‘fails’ with respect to stabilization. CGP Section 2.2.14 prescribes specific activities and timelines for stabilization. The protocol was followed. Additionally, failure is not a statement that can be made since the exceptions in Part 2.2.14.a.iii.a for Arid, Semi-Arid, and Drought Stricken areas apply to the project and the project continues construction. Part 2.2.6 Minimize Dust does not establish a protocol or other guidance to determine failure. Part 2.2.6 calls for minimization with suggested techniques without quantification. Lastly, Mr. Valenta was unwilling and unable to indicate a standard for compliance during his call with Mr. Prewitt and me on January 12, 2021.

The sequence of activity focused on dust minimization as described in 2.2.6 of the CGP is:

1. Daily site watering activities commencing with earth work.
2. Western area (~70 AC) Soil Tackifier with Native Seed Mix – July 2020.

- a. Stabilization of this area began within the CGP requirements after this portion of the project was designated for future building rather than immediate infrastructure development.

Increase Emphasis on Dust Mitigation using City of Albuquerque/Bernalillo County Fugitive Dust Control Plan procedures was implemented at this time. The measure has established a standard of practice for the Mid Rio Grande Region.

- 3. Eastern Boundary Silt Fence for Dust Mitigation purposes – August 2020.
- 4. Eastern area (~50 AC) Soil Tackifier – August 2020.
 - a. Eastern area, Southern section – September 2020.
 - b. Southern Slope, Hydroseed with Tackifier – November 2020.
- 5. Central/Eastern boundary Silt Fence for Dust Mitigation purposes – September 2020.
 - a. Removal of accumulated sand on Silt Fence for Dust Mitigation per S&EP2 Maintenance Log (previously noted).
- 6. Application of long-term, deep penetration polymer for items 2, 4, 4a – November and December 2020.
- 7. Operator photographs of the site under 20-25 mph wind event from Eastern wind showing no dust migration, January 2021. The photos are included in the enclosures for this response.
- 8. Application of long-term deep penetration polymer in pond areas, continuation of same for item 2 – January, February 2021.
- 9. Development of Dust Management Plan per the New Mexico Administrative Code (NMAC) 20.2.23, February 2021.
- 10. Removal of accumulated sand on Silt Fence for Dust Mitigation, February 2021.
- 11. Continuation of watering activities onsite using a monthly cycle to reform polymer and re-establish stabilized soil.
- 12. Construction of vertical structures approximately May 2021.

The second bullet point in this section discusses Notices of Intent. There is no discontinuity in coverage at the site. Part 1.4.4 does not detail a time requirement for entering updates to the NOI. E2RC commits to improving its data entry for NOI's to ensure current information is entered in a quicker fashion.

The reviewer claims in the third bullet point that the silt fence in Photo #3 is not maintained. The control is not deployed as a stormwater control. This specific control is in the interior of the project implemented for dust mitigation using the City of Albuquerque/Bernalillo County Fugitive Dust Control regulation, included as an enclosure to this response, as a guide. CGP 2.2.6 does not prescribe a maintenance interval or evaluation measure for controls used in dust mitigation activities. The reviewer's claim would be correct if the control were utilized for storm water purposes; however, it is not correct in the application for dust control mitigation.

The reviewer, in the fourth bullet point, claims photos from NMED Air Quality Bureau and residents indicate no native topsoil has been preserved. This claim fails on two points:

1. The soil report gained from the NRCS for the site shows the entirety of the soil profile from 0-53 inches of depth as loamy fine sand (SWPPP Plan - NRCS Custom Soil Resource Report – Double M Properties – Legacy at Sierra Vista, page 14: Description of Bluepoint – Typical Profile). Topsoil is typically preserved from the organic zone (upper four inches, nominally) providing it contains organic elements that will contribute to germination and regeneration of vegetation. This site's soil is inorganic, and it will require amendments to accelerate germination and foster growth.
2. The site utilizes mass balancing. Overburden cut from the site to achieve finished grading has been utilized to fill areas where additional material is required to achieve the finished grade in that area. The reviewer did not ask about how site soils were utilized in his January discussion with Mr. Prewitt and this letter's author.

The reviewer's fifth bullet point notes site inspection reports. This claim has been addressed in nearby sections of the response.

Operator Supplied Supporting Information

Double M Properties and E2RC provide several items demonstrating the operator's active intention, planning, and actions to mitigate dust from the site. The items include:

1. Google images demonstrating the site is bound to the west by over 10 miles of desert consisting of sparse vegetation in loamy fine sand (considered blow sand). Additional inspection shows the same desert and sand soil environment travelling 10.55 miles to the west to the Rio Puerco. The same surface soil continues west from the Rio Puerco for several miles.
2. The Google Images show an area under development to the South abutting the Jubilee community. It is reasonable to conclude this area contributes to dust mitigation issues for the area. The dust mitigation issue should include all potential contributors not just the largest area under development.
3. The operator and E2RC provide photographic evidence of a wind event on January 19, 2021. The wind is from the east at 29 mph. The photographs show no dust is generated by the site.
 - a. It is conclusive the stabilization activities performed on the site are controlling the denuded area. Additionally, the photos show soil accumulations on the silt fence used for dust mitigation in the interior of the site. The interior controls are capturing transported dust from the desert expanse west of the project. The controls are performing as employed.
 - b. The surrounding area of the site contributes to the suspended soil in the air. The suspended soil represents material carried from many miles west of the

project as well as some contribution from the site. The contribution from the site is demonstrably mitigated as shown in the January 19, 2021 photo.

4. The operator provides the City of Albuquerque Fugitive Dust Control Regulation as support to his activities to mitigate dust. This regulation is the only formal guideline in the Middle Rio Grande area, and it represents a standard of practice. The New Mexico Administrative Code 20.2.23 provides guidance as well and it is included as an enclosure.
 - a. Notably, The Village of Los Lunas does not have a Fugitive Dust Control Regulation. The CGP provides direction and the NMAC provides additional guidance to comply with the Administrative Code. Both continue to be observed.
5. The operator employed practices with increasing intensity and performance characteristics to enhance dust mitigation and increase the duration of the mitigation.
 - a. A dust mitigation plan has been developed. This plan exceeds the language of the CGP. It carries greater development depth than the Fugitive Dust Control Regulation.
 - b. The plan was provided to the Village of Los Lunas on February 4, 2021.
6. The operator has attempted to engage NMED personnel for suggestions to support Double M's activities specific to Dust Mitigation. NMED directs the operator to the NMED website which lists general approaches to dust mitigation without a hierarchy of application nor specificity of utilization.

Demonstrable of Compliance and Continued Intention to Comply

Double M Properties considers compliance with EPA guidelines an important and primary element in its development work. The evaluation of the site does not identify issues with storm water compliance. Compliance with the current CGP has been demonstrated through current the stormwater plan, the site map showing implementation dates, current and complete site inspections, continual and continuing efforts focused on dust mitigation including implementation of more rigorous protocols than what exists in the CGP and NMAC. It must be noted the emphasis in the CGP, City of Albuquerque regulation, and New Mexico Administrative Code is *mitigation of dust*. It is not possible to obtain elimination of dust as many Jubilee residents have expressed as their measure.

Mr. Prewitt and Double M have an active dialogue with members of the Jubilee community. He has developed an email group with whom he communicates Double M activities regarding dust mitigation as well as receiving comments from community members. The dialogue is ongoing and cordial.

Double M has invested nearly \$100,000 in dust mitigation activities. The development is committed to continuing its investment in this work up to lot sales to vertical builders. The Legacy development plan includes formal landscaping and permanent stabilization items to ensure the long-term compliance of the project as well as enhancement to the area.

Bob Prewitt, Double M Properties, and E2RC appreciate the veracity of the Jubilee community and their dialogue with NMED. Their concerns have not been dismissed rather, they have been considered and incorporated into the storm water management and dust mitigation strategies employed during the project's development. The existing conditions in the western desert are the primary and material contributor to continual dust mitigation issues in the Los Lunas area. Double M Properties has demonstrated it is mitigating dust in accordance with the prevailing regulations in the area.

Please feel free to contact Mr. Prewitt or me for additional information or dialogue.

Sincerely,



Kelley V. Fetter, P.E., CPSWQ, CPMSM, CISEC

CC: Mr. Bob Prewitt – Double M Properties
Sarah Holcomb – NMED by email

Encl: S&E2 Maintenance Log
Interior Silt Fence Maintenance Photos – 2
E2RC Site Map
City of Albuquerque Fugitive Dust Control Application
January 19, 2021 Weather
January 19, 2021 Legacy Site Photos – 2
Sierra Vista Dust Mitigation Exhibit
Google Image High Alt Photo
Google Image High Alt Photo II
New Mexico Administrative Code 20.2.23

